

By: Callegari

H.B. No. 447

A BILL TO BE ENTITLED

AN ACT

1
2 relating to contracts by governmental entities for construction
3 projects and related professional services and to public works
4 performance and payment bonds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended
8 by adding Subsection (h) to read as follows:

9 (h) A reverse auction procedure may not be used to obtain
10 services related to a public work contract for which a bond is
11 required under this section. In this subsection, "reverse auction
12 procedure" has the meaning assigned by Section 2155.062 or a
13 procedure similar to that described by Section 2155.062.

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES FOR
15 CONSTRUCTION PROJECTS

16 SECTION 2.01. Section 2166.2525, Government Code, is
17 amended to read as follows:

18 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
19 ~~[commission shall adopt rules that determine the circumstances for~~
20 ~~use of each]~~ method of contracting allowed under this subchapter
21 for design and construction services is any method provided by
22 Chapter 2264. ~~[In developing the rules, the commission shall~~
23 ~~solicit advice and comment from design and construction~~
24 ~~professionals regarding the criteria the commission will use in~~

1 ~~determining which contracting method is best suited for a project.]~~

2 SECTION 2.02. Section 2254.003(b), Government Code, is
3 amended to read as follows:

4 (b) The professional fees under the contract[+]

5 ~~[(1) must be consistent with and not higher than the~~
6 ~~recommended practices and fees published by the applicable~~
7 ~~professional associations; and~~

8 ~~[(2)]~~ may not exceed any maximum provided by law.

9 SECTION 2.03. Subchapter A, Chapter 2254, Government Code,
10 is amended by adding Section 2254.007 to read as follows:

11 Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
12 subchapter may be enforced through an action for declaratory or
13 injunctive relief filed not later than the 30th day after the date
14 on which the contract is awarded.

15 (b) The injunctive relief provided by this section does not
16 apply to enforcement of a contract entered into by a state agency
17 that has a formal administrative appeals process regarding the
18 award of the contract.

19 SECTION 2.04. Subtitle F, Title 10, Government Code, is
20 amended by adding Chapter 2264 to read as follows:

21 CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR

22 CONSTRUCTION PROJECTS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 2264.001. DEFINITIONS. In this chapter:

25 (1) "Architect" means an individual registered as an
26 architect under Chapter 1051, Occupations Code.

27 (2) "Engineer" means an individual licensed as an

1 engineer under Chapter 1001, Occupations Code.

2 (3) "Facility" means an improvement to real property.

3 (4) "General conditions" in the context of a contract
4 for the construction, rehabilitation, alteration, or repair of a
5 facility means on-site management, administrative personnel,
6 insurance, bonds, equipment, utilities, and incidental work,
7 including minor field labor and materials.

8 (5) "General contractor" means a sole proprietorship,
9 partnership, corporation, or other legal entity that assumes the
10 risk for constructing, rehabilitating, altering, or repairing all
11 or part of a facility at the contracted price.

12 Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
13 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.
14 This chapter applies to a governmental entity or quasi-governmental
15 entity authorized by state law to make a public work contract,
16 including:

17 (1) a state agency as defined by Section 2151.002,
18 including the Texas Building and Procurement Commission;

19 (2) a local government, including:

20 (A) a county;

21 (B) a municipality;

22 (C) a special district or authority, including a
23 school district, a hospital district, a river authority or any
24 other type of water district, and a defense base development
25 authority established under Chapter 379B, Local Government Code;
26 and

27 (D) any other political subdivision of this

1 state; and

2 (3) a public junior college as defined by Section
3 61.003, Education Code.

4 Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
5 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this
6 section, this chapter prevails over any other law relating to
7 public works contracts.

8 (b) This chapter does not prevail over a conflicting
9 provision in a law relating to contracting with a historically
10 underutilized business.

11 (c) This chapter does not prevail over a conflicting
12 provision in:

13 (1) a charter of a home-rule municipality; or

14 (2) a rule of a county, river authority or any other
15 type of water district, or defense base development authority that
16 requires the use of competitive bidding.

17 (d) The governing body of a governmental entity to which
18 Subsection (c) applies may elect to have this chapter overrule the
19 conflicting provision in the charter or rule.

20 Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF
21 TRANSPORTATION. This chapter does not apply to a contract entered
22 into by the Texas Department of Transportation.

23 [Sections 2264.005-2264.050 reserved for expansion]

24 SUBCHAPTER B. GENERAL POWERS AND DUTIES

25 Sec. 2264.051. RULES. A governmental entity may adopt
26 rules as necessary to implement this chapter.

27 Sec. 2264.052. DELEGATION OF AUTHORITY. (a) The governing

1 body of a governmental entity may delegate its authority under this
2 chapter regarding an action authorized or required by this chapter
3 to a designated representative, committee, or other person.

4 (b) The entity shall provide notice of the delegation, the
5 limits of the delegation, and the name of each person designated
6 under Subsection (a) in the request for bids, proposals, or
7 qualifications or in an addendum to the request.

8 (c) If the entity fails to provide notice under Subsection
9 (b):

10 (1) a ranking, selection, or evaluation of bids,
11 proposals, or qualifications for construction services other than
12 by the entity's governing body in an open meeting is advisory only;
13 and

14 (2) the governing body must make its own ranking,
15 selection, or evaluation in an open meeting independent of the
16 person designated under Subsection (a).

17 (d) If the governing body receives a ranking, selection, or
18 evaluation from a person designated under Subsection (a) and fails
19 to accept it or otherwise act on it, then the governing body must
20 make its own ranking, selection, or evaluation in an open meeting
21 independent of the designated person.

22 (e) After announcement of a decision on a request for a bid,
23 proposal, or qualification, or an addendum to a bid, proposal, or
24 qualification, the governing body must provide persons who were not
25 awarded the bid, proposal, qualification, or addendum an
26 opportunity to ask questions about or comment on the reasons for the
27 governing body's decision.

1 Sec. 2264.053. RIGHT TO WORK. (a) This section applies to
2 a governmental entity when the governmental entity is engaged in:

- 3 (1) procuring goods or services under this chapter;
4 (2) awarding a contract under this chapter; or
5 (3) overseeing procurement or construction for a
6 public work or public improvement under this chapter.

7 (b) In engaging in an activity to which this section
8 applies, a governmental entity:

- 9 (1) may not consider whether a person is a member of or
10 has another relationship with any organization; and
11 (2) shall ensure that its bid specifications and any
12 subsequent contract or other agreement do not deny or diminish the
13 right of a person to work because of the person's membership or
14 other relationship status with respect to an organization.

15 Sec. 2264.054. CRITERIA TO CONSIDER. In determining the
16 award of a contract under this chapter, the governmental entity may
17 consider:

- 18 (1) the price;
19 (2) the offeror's experience and reputation;
20 (3) the quality of the offeror's goods or services;
21 (4) the impact on the ability of the governmental
22 entity to comply with rules relating to historically underutilized
23 businesses;
24 (5) the offeror's safety record;
25 (6) the offeror's proposed personnel;
26 (7) whether the offeror's financial capability is
27 appropriate to the size and scope of the project; and

1 (8) any other relevant factor specifically listed in
2 the request for bids, proposals, or qualifications.

3 Sec. 2264.055. USING METHOD OTHER THAN COMPETITIVE BIDDING
4 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)
5 The governing body of a governmental entity that considers a
6 construction contract using a method authorized by this chapter
7 other than competitive bidding must, before advertising, determine
8 which method provides the best value for the governmental entity.

9 (b) The governmental entity shall base its selection among
10 offerors on applicable criteria listed for the particular method
11 used. The governmental entity shall publish in the request for
12 proposals or qualifications the criteria that will be used to
13 evaluate the offerors, and the weighted value for each criterion.

14 (c) The governmental entity shall document the basis of its
15 selection and shall make the evaluations public not later than the
16 seventh day after the date the contract is awarded.

17 Sec. 2264.056. ARCHITECT OR ENGINEER SERVICES. (a) An
18 architect or engineer required to be selected or designated under
19 this chapter has full responsibility for complying with Chapter
20 1051 or 1001, Occupations Code, as applicable.

21 (b) If the selected or designated architect or engineer is
22 not a full-time employee of the governmental entity, the
23 governmental entity shall select the architect or engineer on the
24 basis of demonstrated competence and qualifications as provided by
25 Section 2254.004.

26 Sec. 2264.057. USE OF OTHER PROFESSIONAL SERVICES. (a)
27 Independently of the contractor, construction manager-at-risk, or

1 design-build firm, the governmental entity or construction
2 manager-agent shall provide or contract for the construction
3 materials engineering, testing, and inspection services and the
4 verification testing services necessary for acceptance of the
5 facility by the governmental entity.

6 (b) The governmental entity shall select the services for
7 which it contracts under this section in accordance with Section
8 2254.004.

9 Sec. 2264.058. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
10 REQUIRED. A person who submits a bid, proposal, or qualification to
11 a governmental entity shall seal it before delivery.

12 [Sections 2264.059-2264.100 reserved for expansion]

13 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

14 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE
15 BIDDING. (a) In this chapter, "competitive bidding" is a
16 procurement method by which a governmental entity contracts with a
17 general contractor for the construction, alteration,
18 rehabilitation, or repair of a facility by awarding the contract to
19 the lowest responsive bidder.

20 (b) Except as otherwise provided by this chapter or other
21 law, a governmental entity may contract for the construction,
22 alteration, rehabilitation, or repair of a facility only after the
23 entity advertises for bids for the contract in a manner prescribed
24 by law, receives competitive bids, and awards the contract to the
25 lowest responsive bidder.

26 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The
27 governmental entity shall select or designate an architect or

1 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
2 as applicable, to prepare the construction documents required for a
3 project to be awarded by competitive bidding.

4 Sec. 2264.103. PREPARATION OF REQUEST. The governmental
5 entity shall prepare a request for competitive bids that includes
6 construction documents, estimated budget, project scope, estimated
7 project completion date, and other information that a contractor
8 may require to submit a bid.

9 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental
10 entity shall receive, publicly open, and read aloud the names of the
11 offerors and their bids.

12 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the
13 seventh day after the date the contract is awarded, the
14 governmental entity shall document the basis of its selection and
15 shall make the evaluations public.

16 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
17 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
18 specifically provided by this section, Subchapter B, Chapter 271,
19 Local Government Code, does not apply to a competitive bidding
20 process conducted under this chapter. Sections 271.026,
21 271.027(a), and 271.0275, Local Government Code, apply to a
22 competitive bidding process conducted under this chapter by a
23 governmental entity as defined by Section 271.021, Local Government
24 Code.

25 [Sections 2264.107-2264.150 reserved for expansion]

26 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

27 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE

1 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
2 proposals" is a procurement method by which a governmental entity
3 requests proposals, ranks the offerors, negotiates as prescribed,
4 and then contracts with a general contractor for the construction,
5 rehabilitation, alteration, or repair of a facility.

6 (b) In selecting a contractor through competitive sealed
7 proposals, a governmental entity shall follow the procedures
8 provided by this subchapter.

9 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The
10 governmental entity shall select or designate an architect or
11 engineer to prepare construction documents for the project.

12 Sec. 2264.153. PREPARATION OF REQUEST. The governmental
13 entity shall prepare a request for competitive sealed proposals
14 that includes construction documents, selection criteria and the
15 weighted value for each criterion, estimated budget, project scope,
16 estimated project completion date, and other information that a
17 contractor may require to respond to the request.

18 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The
19 governmental entity shall receive, publicly open, and read aloud
20 the names of the offerors and any monetary proposals made by the
21 offerors.

22 (b) Not later than the 45th day after the date of opening the
23 proposals, the governmental entity shall evaluate and rank each
24 proposal submitted in relation to the published selection criteria.

25 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental
26 entity shall select the offeror that submits the proposal that
27 offers the best value for the governmental entity based on:

1 (1) the selection criteria in the request for proposal
2 and the weighted value for those criteria in the request for
3 proposal; and

4 (2) its ranking evaluation.

5 (b) The governmental entity shall first attempt to
6 negotiate a contract with the selected offeror. The governmental
7 entity and its architect or engineer may discuss with the selected
8 offeror options for a scope or time modification and any price
9 change associated with the modification.

10 (c) If the governmental entity is unable to negotiate a
11 contract with the selected offeror, the governmental entity shall,
12 formally and in writing, end negotiations with that offeror and
13 proceed to the next offeror in the order of the selection ranking
14 until a contract is reached or all proposals are rejected.

15 [Sections 2264.156-2264.200 reserved for expansion]

16 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

17 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
18 MANAGER-AGENT. (a) In this chapter, the "construction
19 manager-agent method" is a delivery method by which a governmental
20 entity contracts with a construction manager-agent, instead of a
21 general contractor, to manage multiple contracts with various
22 construction prime contractors or subcontractors.

23 (b) A construction manager-agent is a sole proprietorship,
24 partnership, corporation, or other legal entity that serves as the
25 agent for the governmental entity by providing construction
26 administration and management services described by Subsection (a)
27 for the construction, rehabilitation, alteration, or repair of a

1 facility.

2 (c) A governmental entity may retain a construction
3 manager-agent for assistance in the construction, rehabilitation,
4 alteration, or repair of a facility only as provided by this
5 subchapter.

6 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION
7 MANAGER-AGENT. The contract between the governmental entity and
8 the construction manager-agent may require the construction
9 manager-agent to provide:

- 10 (1) administrative personnel;
11 (2) equipment necessary to perform duties under this
12 subchapter;
13 (3) on-site management; and
14 (4) other services specified in the contract.

15 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
16 construction manager-agent may not:

- 17 (1) self-perform any aspect of the construction,
18 rehabilitation, alteration, or repair of the facility;
19 (2) be a party to a construction subcontract for the
20 construction, rehabilitation, alteration, or repair of the
21 facility; or
22 (3) provide project bonding for the construction,
23 rehabilitation, alteration, or repair of the facility.

24 Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION
25 MANAGER-AGENT. A construction manager-agent represents the
26 governmental entity in a fiduciary capacity.

27 Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or

1 before the selection of a construction manager-agent, the
2 governmental entity shall select or designate an architect or
3 engineer to prepare the construction documents for the project.

4 (b) The governmental entity's architect or engineer may not
5 serve, alone or in combination with another person, as the
6 construction manager-agent unless the architect or engineer is
7 hired to serve as the construction manager-agent under a separate
8 or concurrent selection process conducted in accordance with this
9 subchapter. This subsection does not prohibit the governmental
10 entity's architect or engineer from providing customary
11 construction phase services under the architect's or engineer's
12 original professional service agreement in accordance with
13 applicable licensing laws.

14 (c) To the extent that the construction manager-agent's
15 services are defined as part of the practice of architecture or
16 engineering under Chapter 1051 or 1001, Occupations Code, those
17 services must be conducted by a person licensed under the
18 applicable chapter.

19 Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental
20 entity using the construction manager-agent method shall procure,
21 in accordance with applicable law and in any manner authorized by
22 this chapter, a general contractor, trade contractors, or
23 subcontractors who will serve as the prime contractor for their
24 specific portion of the work.

25 Sec. 2264.207. SELECTION PROCESS. (a) The governmental
26 entity shall select the construction manager-agent in a one-step or
27 two-step process.

1 (b) The governmental entity shall prepare a single request
2 for proposals, in the case of a one-step process, and an initial
3 request for qualifications, in the case of a two-step process, that
4 includes:

5 (1) a statement as to whether the selection process is
6 a one-step or two-step process;

7 (2) general information on the project site, project
8 scope, schedule, selection criteria and the weighted value for each
9 criterion, and estimated budget and the time and place for receipt
10 of the proposals or qualifications; and

11 (3) other information that may assist the governmental
12 entity in its selection of a construction manager-agent.

13 (c) The governmental entity shall state the selection
14 criteria in the request for proposals or qualifications.

15 (d) If a one-step process is used, the governmental entity
16 may request, as part of the offeror's proposal, proposed fees and
17 prices for fulfilling the general conditions.

18 (e) If a two-step process is used, the governmental entity
19 may not request fees or prices in step one. In step two, the
20 governmental entity may request that five or fewer offerors,
21 selected solely on the basis of qualifications, provide additional
22 information, including the construction manager-agent's proposed
23 fee and prices for fulfilling the general conditions.

24 (f) At each step, the governmental entity shall receive,
25 publicly open, and read aloud the names of the offerors. At the
26 appropriate step, the governmental entity shall also read aloud the
27 fees and prices, if any, stated in each proposal as the proposal is

1 opened.

2 (g) Not later than the 45th day after the date of opening the
3 final proposals, the governmental entity shall evaluate and rank
4 each proposal submitted in relation to the criteria set forth in the
5 request for proposals.

6 Sec. 2264.208. SELECTION OF OFFEROR. (a) The governmental
7 entity shall select the offeror that submits the proposal that
8 offers the best value for the governmental entity based on the
9 published selection criteria and on its ranking evaluation.

10 (b) The governmental entity shall first attempt to
11 negotiate a contract with the selected offeror.

12 (c) If the governmental entity is unable to negotiate a
13 satisfactory contract with the selected offeror, the governmental
14 entity shall, formally and in writing, end negotiations with that
15 offeror and proceed to negotiate with the next offeror in the order
16 of the selection ranking until a contract is reached or
17 negotiations with all ranked offerors end.

18 (d) Not later than the seventh day after the date the
19 contract is awarded, the governmental entity shall make the
20 rankings determined under Section 2264.207(g) public.

21 [Sections 2264.209-2264.250 reserved for expansion]

22 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

23 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
24 MANAGER-AT-RISK. (a) In this chapter, the "construction
25 manager-at-risk method" is a delivery method by which a
26 governmental entity contracts with an architect or engineer for
27 design and construction phase services and contracts separately

1 with a construction manager-at-risk to serve as the general
2 contractor and to provide consultation during the design and
3 construction, rehabilitation, alteration, or repair of a facility.

4 (b) A construction manager-at-risk is a sole
5 proprietorship, partnership, corporation, or other legal entity
6 that assumes the risk for construction, rehabilitation,
7 alteration, or repair of a facility at the contracted price as a
8 general contractor and provides consultation to the governmental
9 entity regarding construction during and after the design of the
10 facility. The contracted price may be a guaranteed maximum price.

11 (c) A governmental entity may use the construction
12 manager-at-risk method in selecting a general contractor for the
13 construction, rehabilitation, alteration, or repair of a facility
14 only as provided by this subchapter.

15 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or
16 before the selection of a construction manager-at-risk, the
17 governmental entity shall select or designate an architect or
18 engineer to prepare the construction documents for the project.

19 (b) The governmental entity's architect or engineer for a
20 project may not serve, alone or in combination with another person,
21 as the construction manager-at-risk unless the architect or
22 engineer is hired to serve as the construction manager-at-risk
23 under a separate or concurrent selection process conducted in
24 accordance with this subchapter. This subsection does not prohibit
25 the governmental entity's architect or engineer from providing
26 customary construction phase services under the architect's or
27 engineer's original professional service agreement in accordance

1 with applicable licensing laws.

2 Sec. 2264.253. SELECTION PROCESS. (a) The governmental
3 entity shall select the construction manager-at-risk in a one-step
4 or two-step process.

5 (b) The governmental entity shall prepare a single request
6 for proposals, in the case of a one-step process, and an initial
7 request for qualifications, in the case of a two-step process, that
8 includes:

9 (1) a statement as to whether the selection process is
10 a one-step or two-step process;

11 (2) general information on the project site, project
12 scope, schedule, selection criteria and the weighted value for each
13 criterion, and estimated budget and the time and place for receipt
14 of the proposals or qualifications; and

15 (3) other information that may assist the governmental
16 entity in its selection of a construction manager-at-risk.

17 (c) The governmental entity shall state the selection
18 criteria in the request for proposals or qualifications.

19 (d) If a one-step process is used, the governmental entity
20 may request, as part of the offeror's proposal, proposed fees and
21 prices for fulfilling the general conditions.

22 (e) If a two-step process is used, the governmental entity
23 may not request fees or prices in step one. In step two, the
24 governmental entity may request that five or fewer offerors,
25 selected solely on the basis of qualifications, provide additional
26 information, including the construction manager-at-risk's proposed
27 fee and prices for fulfilling the general conditions.

1 (f) At each step, the governmental entity shall receive,
2 publicly open, and read aloud the names of the offerors. At the
3 appropriate step, the governmental entity shall also read aloud the
4 fees and prices, if any, stated in each proposal as the proposal is
5 opened.

6 (g) Not later than the 45th day after the date of opening the
7 final proposals, the governmental entity shall evaluate and rank
8 each proposal submitted in relation to the criteria set forth in the
9 request for proposals.

10 Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental
11 entity shall select the offeror that submits the proposal that
12 offers the best value for the governmental entity based on the
13 published selection criteria and on its ranking evaluation.

14 (b) The governmental entity shall first attempt to
15 negotiate a contract with the selected offeror.

16 (c) If the governmental entity is unable to negotiate a
17 satisfactory contract with the selected offeror, the governmental
18 entity shall, formally and in writing, end negotiations with that
19 offeror and proceed to negotiate with the next offeror in the order
20 of the selection ranking until a contract is reached or
21 negotiations with all ranked offerors end.

22 (d) Not later than the seventh day after the date the
23 contract is awarded, the governmental entity shall make the
24 rankings determined under Section 2264.253(g) public.

25 Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction
26 manager-at-risk shall publicly advertise for bids or proposals and
27 receive bids or proposals from trade contractors or subcontractors

1 for the performance of all major elements of the work other than the
2 minor work that may be included in the general conditions.

3 (b) A construction manager-at-risk may seek to perform
4 portions of the work itself if:

5 (1) the construction manager-at-risk submits its bid
6 or proposal for those portions of the work in the same manner as all
7 other trade contractors or subcontractors; and

8 (2) the governmental entity determines that the
9 construction manager-at-risk's bid or proposal provides the best
10 value for the governmental entity.

11 Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The
12 construction manager-at-risk and the governmental entity shall
13 review all trade contractor or subcontractor bids or proposals in a
14 manner that does not disclose the contents of the bid or proposal
15 during the selection process to a person not employed by the
16 construction manager-at-risk, architect, engineer, or governmental
17 entity. All bids or proposals shall be made public after the later
18 of the award of the contract or the seventh day after the date of
19 final selection of bids or proposals.

20 (b) If the construction manager-at-risk reviews, evaluates,
21 and recommends to the governmental entity a bid or proposal from a
22 trade contractor or subcontractor but the governmental entity
23 requires another bid or proposal to be accepted, the governmental
24 entity shall compensate the construction manager-at-risk by a
25 change in price, time, or guaranteed maximum cost for any
26 additional cost and risk that the construction manager-at-risk
27 incurs because of the governmental entity's requirement that

1 another bid or proposal be accepted.

2 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected
3 trade contractor or subcontractor defaults in the performance of
4 its work or fails to execute a subcontract after being selected in
5 accordance with this subchapter, the construction manager-at-risk
6 may itself fulfill the contract requirements or select a
7 replacement trade contractor or subcontractor to fulfill the
8 contract requirements.

9 Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
10 contract amount or guaranteed maximum price has not been determined
11 at the time the contract is awarded, the penal sums of the
12 performance and payment bonds delivered to the governmental entity
13 must each be in an amount equal to the project budget, as specified
14 in the request for proposals or qualifications.

15 (b) The construction manager-at-risk shall deliver the
16 bonds not later than the 10th day after the date the construction
17 manager-at-risk executes the contract unless the construction
18 manager-at-risk furnishes a bid bond or other financial security
19 acceptable to the governmental entity to ensure that the
20 construction manager will furnish the required performance and
21 payment bonds when a guaranteed maximum price is established.

22 [Sections 2264.259-2264.300 reserved for expansion]

23 SUBCHAPTER G. DESIGN-BUILD METHOD

24 Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
25 this chapter, "design-build" is a project delivery method by which
26 a governmental entity contracts with a single entity to provide
27 both design and construction services for the construction,

1 rehabilitation, alteration, or repair of a facility.

2 Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
3 EXCEPTIONS. This subchapter applies only to a facility that is a
4 building or an associated structure. This subchapter does not
5 apply to:

6 (1) a highway, road, street, bridge, utility, water
7 supply project, water plant, wastewater plant, water and wastewater
8 distribution or conveyance facility, wharf, dock, airport runway or
9 taxiway, drainage project, or related type of project associated
10 with civil engineering construction; or

11 (2) a building or structure that is incidental to a
12 project that is primarily a civil engineering construction project.

13 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
14 governmental entity may use the design-build method for the
15 construction, rehabilitation, alteration, or repair of a building
16 or associated structure only as provided by this subchapter. In
17 using that method, the governmental entity shall enter into a
18 single contract with a design-build firm for the design and
19 construction of the building or associated structure.

20 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm
21 under this subchapter must be a sole proprietorship, partnership,
22 corporation, or other legal entity or team that includes an
23 architect or engineer and a construction contractor.

24 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
25 REPRESENTATIVE. The governmental entity shall select or designate
26 an architect or engineer independent of the design-build firm to
27 act as the governmental entity's representative for the duration of

1 the project.

2 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
3 governmental entity shall prepare a request for qualifications that
4 includes general information on the project site, project scope,
5 budget, special systems, selection criteria and the weighted value
6 for each criterion, and other information that may assist potential
7 design-build firms in submitting proposals for the project.

8 (b) The governmental entity shall also prepare the design
9 criteria package that includes more detailed information on the
10 project. If the preparation of the design criteria package
11 requires architectural or engineering services that constitute the
12 practice of architecture within the meaning of Chapter 1051,
13 Occupations Code, or the practice of engineering within the meaning
14 of Chapter 1001, Occupations Code, those services shall be provided
15 in accordance with the applicable law.

16 (c) The design criteria package must include a set of
17 documents that provides sufficient information, including criteria
18 for selection, to permit a design-build firm to prepare a response
19 to the governmental entity's request for qualifications and to
20 provide any additional information requested. The design criteria
21 package must specify criteria the governmental entity considers
22 necessary to describe the project and may include, as appropriate,
23 the legal description of the site, survey information concerning
24 the site, interior space requirements, special material
25 requirements, material quality standards, conceptual criteria for
26 the project, special equipment requirements, cost or budget
27 estimates, time schedules, quality assurance and quality control

1 requirements, site development requirements, applicable codes and
2 ordinances, provisions for utilities, parking requirements, and
3 any other requirement.

4 (d) The governmental entity may not require offerors to
5 submit detailed architectural or engineering designs as part of a
6 proposal or a response to a request for qualifications.

7 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
8 each design-build firm that responded to the request for
9 qualifications, the governmental entity shall evaluate the firm's
10 experience, technical competence, and capability to perform, the
11 past performance of the firm and members of the firm, and other
12 appropriate factors submitted by the firm in response to the
13 request for qualifications, except that cost-related or
14 price-related evaluation factors are not permitted.

15 (b) Each firm must certify to the governmental entity that
16 each architect or engineer that is a member of the firm was selected
17 based on demonstrated competence and qualifications, in the manner
18 provided by Section 2254.004.

19 (c) The governmental entity shall qualify a maximum of five
20 responders to submit proposals that contain additional information
21 and, if the governmental entity chooses, to interview for final
22 selection.

23 (d) The governmental entity shall evaluate the additional
24 information submitted by the offerors on the basis of the selection
25 criteria stated in the request for qualifications and the results
26 of any interview.

27 (e) The governmental entity may request additional

1 information regarding demonstrated competence and qualifications,
2 considerations of the safety and long-term durability of the
3 project, the feasibility of implementing the project as proposed,
4 the ability of the offeror to meet schedules, or costing
5 methodology. As used in this subsection, "costing methodology"
6 means an offeror's policies on subcontractor markup, definition of
7 general conditions, range of cost for general conditions, policies
8 on retainage, policies on contingencies, discount for prompt
9 payment, and expected staffing for administrative duties. The term
10 does not include a guaranteed maximum price or bid for overall
11 design or construction.

12 (f) The governmental entity shall rank each proposal
13 submitted on the basis of the criteria set forth in the request for
14 qualifications.

15 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
16 governmental entity shall select the design-build firm that submits
17 the proposal offering the best value for the governmental entity on
18 the basis of the published selection criteria and on its ranking
19 evaluations.

20 (b) The governmental entity shall first attempt to
21 negotiate a contract with the selected firm.

22 (c) If the governmental entity is unable to negotiate a
23 satisfactory contract with the selected firm, the governmental
24 entity shall, formally and in writing, end all negotiations with
25 that firm and proceed to negotiate with the next firm in the order
26 of the selection ranking until a contract is reached or
27 negotiations with all ranked firms end.

1 (d) Not later than the seventh day after the date the
2 contract is awarded, the governmental entity shall make the
3 rankings determined under Section 2264.307(f) public.

4 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After
5 selection of the design-build firm, that firm's architects or
6 engineers shall complete the design and submit all design elements
7 for review and determination of scope compliance to the
8 governmental entity or the governmental entity's architect or
9 engineer before or concurrently with construction.

10 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
11 design-build firm shall supply a set of construction documents for
12 the completed project to the governmental entity at the conclusion
13 of construction. The documents must note any changes made during
14 construction.

15 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
16 or performance bond is not required and may not provide coverage for
17 the portion of the design-build contract with the design-build firm
18 under this subchapter that includes design services only.

19 (b) If a fixed contract amount or guaranteed maximum price
20 has not been determined at the time the design-build contract is
21 awarded, the penal sums of the performance and payment bonds
22 delivered to the governmental entity must each be in an amount equal
23 to the construction budget, as specified in the design criteria
24 package.

25 (c) The design-build firm shall deliver the bonds not later
26 than the 10th day after the date the design-build firm executes the
27 contract unless the design-build firm furnishes a bid bond or other

1 financial security acceptable to the governmental entity to ensure
2 that the design-build firm will furnish the required performance
3 and payment bonds when a guaranteed maximum price is established.

4 [Sections 2264.312-2264.350 reserved for expansion]

5 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

6 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,
7 "job order contracting" is a procurement method used for repair or
8 maintenance of an existing facility when the work is of a recurring
9 nature but the delivery times, type, and quantities of work
10 required are indefinite.

11 Sec. 2264.352. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
12 FACILITIES REPAIR OR MAINTENANCE. A governmental entity may award
13 job order contracts for the repair or maintenance of a facility if:

14 (1) the work is of a recurring nature but the delivery
15 times are indefinite;

16 (2) indefinite quantities and orders are awarded
17 substantially on the basis of predescribed and prepriced tasks; and

18 (3) the price for the repair or maintenance does not
19 exceed \$1 million per job order.

20 Sec. 2264.353. CONTRACTUAL UNIT PRICES. The governmental
21 entity may establish contractual unit prices for a job order
22 contract by:

23 (1) specifying one or more published construction unit
24 price books and the applicable divisions or line items; or

25 (2) providing a list of work items and requiring the
26 offerors to propose one or more coefficients or multipliers to be
27 applied to the price book or prepriced work items as the price

1 proposal.

2 Sec. 2264.354. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
3 governmental entity may use the competitive sealed proposal method
4 under Subchapter D for job order contracts.

5 (b) The governmental entity shall advertise for, receive,
6 and publicly open sealed proposals for job order contracts.

7 (c) The governmental entity may require offerors to submit
8 information in addition to rates, including experience, past
9 performance, and proposed personnel and methodology.

10 Sec. 2264.355. AWARDED OF JOB ORDER CONTRACTS. The
11 governmental entity may award job order contracts to one or more job
12 order contractors in connection with each solicitation of
13 proposals.

14 Sec. 2264.356. USE OF ARCHITECT OR ENGINEER. If a job order
15 contract or an order issued under the contract requires
16 architectural or engineering services that constitute the practice
17 of architecture within the meaning of Chapter 1051, Occupations
18 Code, or the practice of engineering within the meaning of Chapter
19 1001, Occupations Code, the governmental entity shall select or
20 designate an architect or engineer to prepare the construction
21 documents for the project.

22 Sec. 2264.357. JOB ORDER CONTRACT TERM. The base term for a
23 job order contract may not exceed two years. The governmental
24 entity may renew the contract annually for not more than three
25 additional years.

26 Sec. 2264.358. JOB ORDERS. (a) An order for a job or
27 project under a job order contract must be signed by the

1 governmental entity's representative and the contractor.

2 (b) The order may be:

3 (1) a fixed price, lump-sum contract based
4 substantially on contractual unit pricing applied to estimated
5 quantities; or

6 (2) a unit price order based on the quantities and line
7 items delivered.

8 Sec. 2264.359. PAYMENT AND PERFORMANCE BONDS. The
9 contractor shall provide payment and performance bonds, if required
10 by law, based on the amount or estimated amount of any order.

11 [Sections 2264.360-2264.400 reserved for expansion]

12 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

13 Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL
14 GOVERNMENTS. (a) For a contract entered into by a defense base
15 development authority, municipality, or river authority under a
16 method provided by this chapter, the municipality or authority
17 shall publish notice of the time and place the bids or proposals or
18 the responses to a request for qualifications will be received and
19 opened.

20 (b) The notice must be published in a newspaper of general
21 circulation in the county in which the defense base development
22 authority's or municipality's central administrative office is
23 located or in the county in which the greatest amount of the river
24 authority's territory is located. If there is not a newspaper of
25 general circulation in that county, the notice shall be published
26 in a newspaper of general circulation in the county nearest the
27 county seat of the county in which the defense base development

1 authority's or municipality's central administrative office is
2 located or the county seat of the county in which the greatest
3 amount of the river authority's territory is located.

4 (c) The notice must be published once each week for at least
5 two weeks before the deadline for receiving bids, proposals, or
6 responses.

7 (d) In a two-step procurement process, the time and place
8 the second step bids, proposals, or responses will be received are
9 not required to be published separately.

10 Sec. 2264.402. NOTICE REQUIREMENTS FOR COUNTIES. (a) For a
11 contract entered into by a county under a method provided by this
12 chapter, the county shall publish notice of the time and place the
13 bid or proposal or request for qualifications will be received and
14 opened.

15 (b) The notice must be published in a newspaper of general
16 circulation in the county once each week for at least two weeks
17 before the deadline for receiving bids, proposals, or responses.
18 If there is not a newspaper of general circulation in the county,
19 the notice shall be:

20 (1) posted at the courthouse door of the county; and

21 (2) published in a newspaper of general circulation in
22 the county nearest the county seat of the county publishing the
23 notice.

24 [Sections 2264.403-2264.425 reserved for expansion]

25 SUBCHAPTER J. ENFORCEMENT

26 Sec. 2264.426. VOID CONTRACT. A contract entered into in
27 violation of this chapter is void as against public policy.

1 Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
2 chapter may be enforced through an action for declaratory or
3 injunctive relief filed not later than the 30th day after the date
4 on which the contract is awarded.

5 (b) The injunctive relief provided by this section does not
6 apply to enforcement of a contract entered into by a state agency
7 that has a formal administrative appeals process regarding the
8 award of the contract.

9 SECTION 2.05. Sections 44.031(a) and (f), Education Code,
10 are amended to read as follows:

11 (a) Except as provided by this subchapter, all school
12 district contracts, except contracts for the purchase of produce or
13 vehicle fuel or a contract made under Chapter 2264, Government
14 Code, valued at \$25,000 or more in the aggregate for each 12-month
15 period shall be made by the method, of the following methods, that
16 provides the best value for the district:

17 (1) competitive bidding;

18 (2) competitive sealed proposals;

19 (3) a request for proposals, for services other than
20 construction services;

21 (4) a catalogue purchase as provided by Subchapter B,
22 Chapter 2157, Government Code;

23 (5) an interlocal contract;

24 (6) a method provided by Chapter 2264, Government
25 Code;

26 (7) ~~[a design/build contract,~~

27 ~~[(7) a contract to construct, rehabilitate, alter, or~~

1 ~~repair facilities that involves using a construction manager,~~

2 ~~[(8) a job order contract for the minor construction,~~
3 ~~repair, rehabilitation, or alteration of a facility,~~

4 ~~[(9)]~~ the reverse auction procedure as defined by
5 Section 2155.062(d), Government Code; or

6 (8) ~~[(10)]~~ the formation of a political subdivision
7 corporation under Section 304.001, Local Government Code.

8 (f) This section does not apply to a contract for
9 professional services rendered, including services of an
10 architect, attorney, engineer, or fiscal agent. A school district
11 may, at its option, contract for professional services rendered by
12 a financial consultant or a technology consultant in the manner
13 provided by Section 2254.003, Government Code, in lieu of the
14 methods provided by this section.

15 SECTION 2.06. Section 431.101(g), Transportation Code, is
16 amended to read as follows:

17 (g) A local government corporation ~~[created by a navigation~~
18 ~~district]~~ must comply with all state law related to the design and
19 construction of projects, including the procurement of design and
20 construction services, that applies to the local government
21 ~~[navigation district]~~ that created the corporation.

22 ARTICLE 3. ADDITIONAL EXEMPTIONS

23 SECTION 3.01. Section 44.901, Education Code, is amended by
24 adding Subsection (j) to read as follows:

25 (j) Chapter 2264, Government Code, does not apply to this
26 section.

27 SECTION 3.02. Section 51.927, Education Code, is amended by

1 adding Subsection (k) to read as follows:

2 (k) Chapter 2264, Government Code, does not apply to this
3 section.

4 SECTION 3.03. Section 2166.406, Government Code, is amended
5 by adding Subsection (k) to read as follows:

6 (k) Chapter 2264 does not apply to this section.

7 SECTION 3.04. Chapter 302, Local Government Code, is
8 amended by adding Section 302.006 to read as follows:

9 Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.
10 Chapter 2264, Government Code, does not apply to this chapter.

11 SECTION 3.05. Subchapter E, Chapter 335, Local Government
12 Code, is amended by adding Section 335.077 to read as follows:

13 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.
14 Chapter 2264, Government Code, does not apply to this chapter.

15 SECTION 3.06. Section 22.074, Transportation Code, is
16 amended by adding Subsection (f) to read as follows:

17 (f) Chapter 2264, Government Code, does not apply to a joint
18 board whose constituent agencies are populous home-rule
19 municipalities.

20 SECTION 3.07. Section 370.305, Transportation Code, is
21 amended by adding Subsection (c-1) to read as follows:

22 (c-1) Chapter 2264, Government Code, does not apply to
23 agreements entered into pursuant to this section.

24 SECTION 3.08. Subchapter Q, Chapter 451, Transportation
25 Code, is amended by adding Section 451.8025 to read as follows:

26 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.
27 Chapter 2264, Government Code, does not apply to this subchapter.

1 SECTION 3.09. Subchapter C, Chapter 452, Transportation
2 Code, is amended by adding Section 452.1095 to read as follows:

3 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
4 CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply
5 to an authority consisting of one subregion governed by a
6 subregional board created under Subchapter O.

7 SECTION 3.10. Section 60.452, Water Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) Chapter 2264, Government Code, does not apply to this
10 subchapter.

11 ARTICLE 4. CONFORMING AMENDMENTS

12 SECTION 4.01. Section 252.021(a), Local Government Code, is
13 amended to read as follows:

14 (a) Before a municipality may enter into a contract that
15 requires an expenditure of more than \$25,000 from one or more
16 municipal funds, the municipality must:

17 (1) comply with the procedure prescribed by this
18 subchapter and Subchapter C for competitive sealed bidding or
19 competitive sealed proposals;

20 (2) use the reverse auction procedure, as defined by
21 Section 2155.062(d), Government Code, for purchasing; or

22 (3) comply with a method described by Chapter 2264,
23 Government Code [~~Subchapter H, Chapter 271~~].

24 SECTION 4.02. Section 252.043(d-1), Local Government Code,
25 is amended to read as follows:

26 (d-1) A contract for construction of a project described by
27 Subsection (d) that requires an expenditure of \$1.5 million or less

1 may be awarded using the competitive sealed proposal procedure
2 prescribed by Chapter 2264, Government Code [~~Section 271.116~~].

3 ARTICLE 5. REPEALER

4 SECTION 5.01. The following are repealed:

5 (1) Sections 44.0312, 44.0315, 44.035, 44.036,
6 44.037, 44.038, 44.039, 44.040, 44.041, and 44.043, Education Code;

7 (2) Subchapter T, Chapter 51, Education Code;

8 (3) Sections 2166.2511, 2166.2526, 2166.2531,
9 2166.2532, 2166.2533, and 2166.2535, Government Code;

10 (4) Subchapter H, Chapter 271, Local Government Code;

11 and

12 (5) Section 431.101(e), Transportation Code.

13 ARTICLE 6. TRANSITION; EFFECTIVE DATE

14 SECTION 6.01. (a) The changes in law made by this Act apply
15 only to a contract or construction project for which a governmental
16 entity first advertises or otherwise requests bids, proposals,
17 offers, or qualifications, or makes a similar solicitation, on or
18 after the effective date of this Act.

19 (b) A contract or construction project for which a
20 governmental entity first advertises or otherwise requests bids,
21 proposals, offers, or qualifications, or makes a similar
22 solicitation, before the effective date of this Act is governed by
23 the law as it existed immediately before the effective date of this
24 Act, and that law is continued in effect for that purpose.

25 SECTION 6.02. This Act takes effect September 1, 2007.